

CHALOS, O'CONNOR & DUFFY, LLP
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DS Rendite-Fonds Nr. 62 MS Cape Cook GmbH & Co. Containerschiff KG
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Owen F. Duffy (OD-3144)
George E. Murray (GM-4172)

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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DS RENDITE-FONDS NR. 62 MS CAPE COOK
GMBH & CO. CONTAINERSCHIFF KG,

Plaintiff,

v.

07 CV _____ ()

VERIFIED COMPLAINT

FAIRWIND SHIPPING COMPANY LIMITED,

Defendant.
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Plaintiff DS Rendite-Fonds Nr. 62 MS Cape Cook GmbH & Co. Containerschiff KG, (hereinafter "RENDITE"), by its attorneys, as and for its Verified Complaint against the Defendant FAIRWIND SHIPPING COMPANY LIMITED (hereinafter "FAIRWIND"), alleges upon information and belief as follows:

JURISDICTION

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure, and also falls under this Court's admiralty and maritime jurisdiction pursuant to 28 U.S.C. § 1333.

THE PARTIES

2. At all times material hereto, Plaintiff RENDITE was and still is a foreign business entity duly organized and existing pursuant to the laws of a foreign country with an office and principal place of business in Dortmund, Germany.

3. The plaintiff is engaged in business as an owner or time chartered owner of ocean vessels pursuant to which it transports ocean cargo in exchange for payments of hire or freight.

4. At all times material hereto, Defendant RENDITE was and still is a foreign business entity duly organized and existing pursuant to the laws of a foreign country with an office and principal place business at 15th Floor, Seaview Commercial Building, 21-24 Connaught Road West, Hong Kong, P.R. China.

5. The defendant is engaged in business as a carrier of cargo by ocean vessels.

FIRST CAUSE OF ACTION
FOR BREACH OF MARITIME CONTRACT

6. On October 30, 2006, RENDITE, as owner, entered into a maritime contract with FAIRWIND, as charterer, whereby RENDITE's vessel, the M/V CAPE COOK, was hired for a time charter, of minimum 11 months/maximum 12 months, to carry ocean cargo shipped by FAIRWIND in exchange for payments of hire.

7. This contract between RENDITE and FAIRWIND is a maritime contract made out on a New York Produce Exchange form with annexed Rider Clauses (hereinafter referred collectively to as the "Maritime Contract").

8. Pursuant to the terms and conditions of this maritime contract, the M/V CAPE COOK was delivered to FAIRWIND in accordance with the Maritime Contract.

9. Under Clause 51 of the Maritime Contract any disputes arising between the parties are to be governed by English law and shall be referred to arbitration in Hong Kong to be conducted in accordance with the London Maritime Arbitration Association Terms.

10. In accordance with Clause 4 of the Maritime Contract, Defendant FAIRWIND was obligated to pay hire at the rate of \$10,550 per day, pro rata, payable every fifteen (15) days in advance.

11. Defendant FAIRWIND is in breach of its obligations under the Maritime Contract because it has failed to pay hire as required by the terms and conditions of the charter party.

12. Defendant FAIRWIND failed to pay hire on April 22, 2007 and May 7, 2007, and May 14, 2007 and, therefore, RENDITE has a maritime claim against FAIRWIND for the principal sum of \$474,750.00.

PRAYER FOR RELIEF

13. Notwithstanding the fact that the liability of FAIRWIND is subject to determination by arbitration in Hong Kong, there are now, or will be during the pendency of this action, certain assets, accounts, freights, monies, charter hire, credits, effects, payment for bunkers, goods or services, bills of lading, cargo and the like belonging to or claimed by the Defendant FAIRWIND within this District and held by various parties, as garnishees.

14. Plaintiff RENDITE believes that some of these assets, to wit: bank accounts; payments from the purchasers of other cargoes; freight and/or hire payments to or from owners of vessels in U.S. dollars, or other charterers or shippers of cargo, and Defendant; and/or Clearing House Interbank Payment System (CHIPS) credits or funds being transferred through intermediary banks are located in this District in the possession of garnishees, including American Express Bank, Ltd., Bank of America, Bank of China, Bank of New York, Barclays Bank, Citibank N.A., Deutsche Bank, HSBC (USA), JP Morgan Chase Bank, Standard Chartered Bank, Wachovia Bank, and possibly other banks or financial institutions located in New York.

15. As set forth in the accompanying affidavit of Owen F. Duffy, the Defendant FAIRWIND cannot be found within this District within the meaning of Rule B

of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure.

16. Because this Verified Complaint sets forth an *in personam* maritime claim against the Defendant and because the Defendant FAIRWIND cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, the requirements for a Rule B attachment and garnishment are met and Plaintiff seeks the issuance of process of maritime attachment so that it may obtain security for its claims against the Defendant and/or *quasi in rem* jurisdiction over the property of the Defendant so that an eventual judgment and/or award can be satisfied.

17. In addition to an attachment in the full amount of the claim as set forth above, Plaintiff also seeks an attachment over an additional sum to cover awardable attorneys' fees and costs which are recoverable in arbitration pursuant to the London Maritime Arbitration Association's rules.

18. Plaintiff's aggregate claim against the Defendant, FAIRWIND, amounts to US\$574,750, which is comprised of the US\$474,750.00 for the principal claim, and estimated awardable interest and estimated awardable costs of bringing the underlying claim under the Maritime Contract to arbitration in the amount of US \$100,000.00

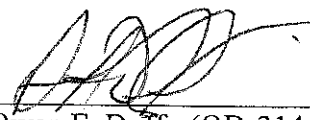
WHEREFORE, Plaintiff prays as follows:

- A. That the Defendant be summoned to appear and answer this Verified Complaint;
- B. That the Defendant not being found within this District, as set forth in the Affidavit of Owen F. Duffy, then all of its assets, accounts, freights, monies, charter hire, credits, effects, payment for bunkers, goods or services, bills of lading, cargo and the like belonging to or claimed by the Defendant within this District up to the amount sued for herein be attached pursuant to Supplemental Rule B and to pay Plaintiff's damages;
- C. That this Court retain jurisdiction over this matter through the entry of a judgment either by this Court, and/or the London arbitration panel, so that judgment may be entered in favor of Plaintiff for the amount of its claim with costs, i.e. US \$574,750.00, and that a judgment of condemnation and sale be entered against the property arrested and attached herein in the amount of Plaintiff's claim, plus costs to be paid out of the proceeds thereof; and
- D. That Plaintiff has such other and further relief as the Court may determine to be just and proper under the circumstances.

Dated: Port Washington, New York
May 16, 2007

CHALOS, O'CONNOR & DUFFY, LLP
Attorneys for Plaintiff

By:



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GMBH & CO. CONTAINERSCHIFF KG,

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VERIFICATION

FAIRWIND SHIPPING COMPANY LIMITED,

Defendant.

-----X
STATE OF NEW YORK :
: ss.
COUNTY OF NASSAU :

BEFORE ME, the undersigned authority, personally came and appeared Owen F. Duffy who, after being duly sworn, did depose and state:


1. That he is a partner in the law firm of Chalos, O'Connor & Duffy LLP, counsel for the Plaintiff, DS Rendite-Fonds Nr. 62 MS Cape Cook GmbH & Co. Containerschiff KG, herein;
2. That he has read the foregoing complaint and knows the contents thereof; and
3. That he believes the matters to be true based on documents and information obtained from employees and representatives of the Plaintiff through its agents, underwriters and attorneys.

4. The reason that this verification was made by deponent and not by the Plaintiff is because Plaintiff is a foreign corporation, whose officers are not in this district, and whose verification cannot be obtained within the time constraints presented by the circumstances of this case.

Dated: Port Washington, New York
May 15, 2007

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Attorneys for Plaintiff

By:


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Subscribed and sworn to before me this
May 15, 2007


Notary Public, State of New York

GEORGE E. MURRAY
Notary Public, State of New York
No. 02MU6108120
Qualified in New York County
Commission Expires April 12, 2008